IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3542 OF 2004

Bajirao Ambadas Tambe ... Petitioner

V/s

The Pune Municipal Transport Undertaking through its Transport Manager, Pune. ... Respondent

Mr. A.S. Khandeparkar for the petitioner.

Mr. R.G. Ketkar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 16TH JANUARY, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner has impugned the order dated 26.7.2001 of the Member, Industrial Court, Pune, allowing the revision application of the present respondent and setting aside the order passed by the Labour Court, Pune in Complaint (ULP) No. 162 of 1995 dismissing the same.

3. The facts involved in brief are thus -

The complainant petitioner joined the services of the respondent Undertaking as a Driver on 25.2.1987 and since then he has discharged his duty and his service record is said to be unblemished. Inspite of this fact, according to the complainant, the respondent issued chargesheet to him on 27.10.1994 alleging that he had committed misconduct as contemplated under Clause 25(g) of the Certified Standing Orders applicable to the respondent. In pursuance of the chargesheet, the respondent had initiated departmental enquiry against the complainant. According to the complainant, the respondent had appointed the enquiry officer hurriedly and completed the departmental enquiry during the period from 9.11.1994 to 21.11.1994. According to the complainant, the respondent had not examined any eye-witness nor it had produced any documentary evidence and inspite of this fact the enquiry officer is alleged to have submitted his report to the respondent without considering the evidence on record and submitted the report holding him guilty for the charges levelled against him. On the basis of the report of the enquiry officer, the respondent terminated the complainant from service by order dated 29.6.1995. Hence, the

complainant challenged the dismissal by filing the complaint.

4. The Manager of the respondent resisted the complaint by filing written statement and denying the adverse contentions and come with a case that the service record of the complainant was not good and it contains accidents, negligence in driving, misbehaviour, etc. According to the respondent, the chargesheet dated 27.10.1994 was issued to the complainant only because he had caused an accident in which three persons were seriously injured. During the course of the departmental enquiry, the reporting officer Mr. Kshirsagar was examined and he has also filed relevant documents before the enquiry officer. Thereafter the complainant submitted his defence statement before the enquiry officer and after completing the enquiry, the enquiry officer examined the evidence on record and the documents and thereafter come to the conclusion that the charge levelled against the complainant was proved. Consequently, the enquiry report came to be filed which was accepted and services of the petitioner came to be terminated w.e.f. 29.6.1995. Therefore, it is the case of the respondent that, petitioner’s service was terminated after adopting due process of law and, as

such, no unfair labour practice came to be committed.

5. The Labour Court, after hearing both parties, came to the conclusion that the charge of misconduct was not proved on the basis of evidence on record and further the complainant had proved that termination imposed by the respondent amounted to unfair labour practice within the meaning of Item 1(b), (d) and (g) of Schedule IV of the MRTU & PULP Act, 1971 and, as such, directed that complainant was entitled for relief of reinstatement with continuity of service and 50% back wages from the date of dismissal till the date of reinstatement.

6. The revision was preferred against the said order by the present respondent. The Industrial Court, after hearing both parties, came to the conclusion that the charge of misconduct levelled against the complainant workman was proved and, therefore, judgment passed by the Labour Court was not legal, proper and correct and, as such, came to be set aside holding that the termination of services of the present petitioner was correct. Hence the present petition.

7. At the outset, it may be noted that, it is clear from the record that the Labour Court did not read the

documentary evidence properly, otherwise it could not have committed misconduct regarding the vital contents of the document of spot panchnama which was prepared after the accident took place. I may first note that though I am not inclined to go into the details as to why the accident took place, the fact remains that the circumstances revealed from the record show that both vehicles collided at the distance of 15 ft. from north end of the road anf further bus of the complainant pushed the fiat car involved in the accident on the back side for about 62 ft. which per-se show that the bus was driven in high speed and the complainant was unable to control the bus in high speed. The spot panchnama which is referred to by the revisional Court depicts the correct picture of the scene of accident which is a definite indication to the rash manner in which the petitioner has driven the vehicle. It cannot be overlooked that he was driving the vahicle of public Undertaking involving lives of several innocent persons which were travelling not only in the bus but also were on the road and on other vehicles on the spot where the accident took place.

8. The learned counsel for the petitioner vehemently urged that the petitioner’s record is otherwise

unblemished and it was his first accident and, therefore, he deserves to show leniency. It was further submitted that, if at all he was to be punished, lesser punishment should be awarded to him. However, on this point, I am of the view that there could not be lesser punishment to a rash driver of a public Undertaking because lives of innocent people would be constantly at stake when he plies the vehicle and at no stretch of imagination it cannot be said that the punishment was shockingly disproportionate to the misconduct committed by the petitioner. On critical perusal of the judgment of the Industrial Court, I do not see any perversity. On the other hand, it is apparent that errors committed by the Labour Court in adopting particular reasoning has been corrected by the Industrial Court and, therefore, no interference is required in the judgment and order passed by the Industrial Court, Pune, in dismissing the complaint.

9. In the result, the petition deserves to be dismissed and stands dismissed with no order as to costs.

.....